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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

AMERICAN CIVIL LIBERTIES UNION and
SEIU-UHW,

Plaintiffs,

v.

ERIC D. HARGAN, Acting Secretary of the U.S.
Department of Health and Human Services; R.
ALEXANDER ACOSTA, Secretary of Labor; and
STEVEN T. MNUCHIN, Secretary of the Treasury,
in their official capacities,

Defendants.

Case No. 4:17-cv-05772-SBA

**PLAINTIFFS' MOTION FOR CASES
TO BE CONSIDERED RELATED**

[N.D. Cal. Civ. L.R. 3-12, 7-11]

STATE OF CALIFORNIA, by and through Attorney
General Xavier Becerra,

Case No. 4:17-cv-05783-HSG

Plaintiff,

v.

ERIC D. HARGAN, in his Official Capacity as
Acting Secretary of the U.S. Department of Health &
Human Services; U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES; R.
ALEXANDER ACOSTA, in his Official Capacity as
Secretary of the U.S. Department of Labor; U.S.
DEPARTMENT OF LABOR; STEVEN
MNUCHIN, in his Official Capacity as Secretary of
the Treasury; U.S. DEPARTMENT OF THE
TREASURY; DOES 1-100,

Defendants.

TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

Pursuant to Civil Local Rules 3-12 and 7-11, Plaintiffs hereby move the Court for an Order relating *American Civil Liberties Union et al. v. Eric D. Hargan et al.*, No. 4:17-cv-05772-SBA (“*ACLU*”) to *State of California v. Eric D. Hargan et al.*, No. 4:17-cv-05783-HSG (“*California*”) for consideration before Judge Haywood S. Gilliam. Plaintiffs’ counsel has conferred with counsel for Defendants and the attorneys representing the California Attorney General. The California Attorney General does not oppose relating the cases; counsel for Defendants has not consented. Declaration of Alexis Coll-Verly at ¶¶3-4.

APPLICABLE RULE

Civil Local Rule 3-12 provides, in pertinent part: “An action is related to another when: (1) The actions concern substantially the same parties, property, transaction or event; and (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.”

THE RELATIONSHIP BETWEEN *ACLU* AND *CALIFORNIA*

ACLU is related to *California* because they involve substantially the same parties, transactions, and events. *See* Civ. L.R. 3-12(a)(1). If the cases are conducted before different

judges, there will be a burdensome duplication of labor and expense, as well as the potential for conflicting results. *See* Civ. L.R. 3-12(a)(2).

I. *ACLU and California* involve substantially the same transaction and events.

On October 6, 2017, all of the named plaintiffs in both *ACLU* and *California* separately filed complaints in the U.S. District Court for the Northern District of California, arguing that the Trump Administration's issuance of two Interim Final Regulations ("IFRs") violates the First and Fifth Amendments to the U.S. Constitution and the Administrative Procedure Act. The effect of the IFRs is to allow any employer or university to opt out of the contraceptive coverage requirements of the Patient Protection and Affordable Care Act (ACA) based on a religious or moral objection to contraception. The IFRs significantly alter the current narrow religious exemption and accommodation scheme and craft an entirely new moral exemption to the mandate that insurance cover contraception without cost-sharing.

ACLU and *California* stem from the same transaction or occurrence: the promulgation and consequences of the Trump Administration's *Religious Exemptions and Accommodations for Coverage of Certain Preventative Services Under the Affordable Care Act* (82 Fed. Reg. 47,792 (2017)) and *Moral Exemptions and Accommodations for Coverage of Certain Preventative Services under the Affordable Care Act* (82 Fed. Reg. 47,838 (2017)). In both actions, the plaintiffs assert that the new IFRs violate (1) the Establishment Clause of the First Amendment by advancing and endorsing a particular set of religious beliefs and allowing entities to use their religious beliefs to harm third parties, (2) the Equal Protection Clause of the Fifth Amendment by targeting health benefits women need for discriminatory treatment, imposing and sanctioning sex stereotypes, and imposing disabilities and burdens on women that deny them equal participation in society and (3) the Administrative Procedure Act (APA) by implementing rules that are arbitrary, capricious, and an abuse of discretion and that are otherwise not in accordance with law. Moreover, both cases request nearly identical declaratory and injunctive relief.

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1 **II. *ACLU* and *California* involve substantially the same parties.**

2 The defendants in both *ACLU* and *California* are nearly identical: Eric D. Hargan, Acting
3 Secretary of the U.S. Department of Health and Human Services,¹ R. Alexander Acosta, Secretary
4 of Labor, and Steven Mnuchin, Secretary of the Treasury, in their official capacities. While
5 *California* names additional “Doe” defendants, the significant overlap in parties between *ACLU*
6 and *California* satisfies the requirements of Civ. L.R. 3-12(a)(1).

7 In addition, the *ACLU* case involves two institutional plaintiffs—the American Civil
8 Liberties Union, a non-partisan public-interest membership organization with over 1.5 million
9 members, many of whom are Californians, and the SEIU-UHW, a labor organization with over
10 90,000 members who are health care workers in California. These plaintiffs seek to protect their
11 members who will lose their contraceptive-coverage under the unlawful IFRs. In *California*,
12 Attorney General Xavier Becerra represents the State of California, protecting its own proprietary
13 interests, as well as all California citizens, protecting their constitutional and statutory rights. In
14 short, both *ACLU* and *California* seek to protect, in large part, the same women whose
15 constitutional and statutory protections are threatened by the Trump Administration’s actions. The
16 confluence of interested parties satisfies the requirements of Civ. L.R. 3-12(a)(1).

17 **III. Relating *ACLU* to *California* will conserve judicial resources and avoid inconsistent**
18 **results.**

19 These cases raise identical legal questions. Litigation before different judges will
20 undoubtedly lead to unduly burdensome duplication of labor and expense by plaintiffs,
21 defendants, and judges. Because Judge Armstrong has recused herself from the *California* case,
22 both cases should proceed before Judge Gilliam. Relating these cases thus satisfies Civ. L.R. 3-
23 12(a)(2).

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¹ Pursuant to Fed. R. Civ. P. 25(d), Eric. D. Hargan is substituted for Don J. Wright as a defendant
28 in his official capacity as Acting Secretary of the U.S. Department of Health and Human Services.

CONCLUSION

For the reasons set forth above, we respectfully request that the Court relate the *ACLU* action and the *California* action.

Dated: November 1, 2017

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